



4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2016-9536; Airspace Docket No. 16-AWP-27]

Establishment of Temporary Restricted Areas R-2509E, R-2509W, and R-2509N; Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes temporary restricted areas (Temp RAs) R-2509E, R-2509W, and R-2509N, Twentynine Palms, CA, to support a Marine Expeditionary Brigade level Large Scale Exercise (LSE) planned for existing and newly acquired training lands at Marine Corps Air Ground Combat Center (MCAGCC), Twentynine Palms from August 7 to August 26, 2017.

DATES: Effective date 0901 UTC, August 7, 2017.

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for this rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.

This regulation is within the scope of that authority as it would establish the temporary restricted area airspace at Twentynine Palms, CA, to support a Marine Expeditionary Brigade level LSE and accommodate essential USMC training requirements.

History

On February 23, 2017, the FAA published in the Federal Register a notice of proposed rulemaking (NPRM) (82 FR 11414), Docket No. FAA-2016-9536, to establish Temp RAs R-2509E, R-2509W, and R-2509N, Twentynine Palms, CA, to support a Marine Expeditionary Brigade level LSE. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Five comments were received; four from individuals and one from Aircraft Owners and Pilots Association (AOPA).

Discussion of Comments

In their response to the NPRM, the commenters raised several substantive issues. The commenters contend the temporary restricted airspace design could be managed through alternative airspace management methods like temporary flight restrictions or controlled firing areas. Additionally, commenters contended that the location and lack of knowledge of temporary restricted areas would have a negative impact on general aviation aircraft. One commenter supported the exercise to allow warfighters the opportunity to practice tactics in preparation for actual war. The comments have been categorized in the following groupings: (1) alternative designation of the airspace as a temporary flight restriction (TFR) or as a controlled firing area

(CFA); (2) the general concern that R-2509W creates a narrow funneling of traffic at a known “choke point” of airspace; and (3) the need for advanced notification of pilots of activation and awareness of temporary restricted areas.

Having considered the issues and recommendations provided by the commenters, the FAA offers the following responses.

Designation of the airspace as a TFR or as a CFA

Two commenters suggested the airspace would be better served as TFR because a TFR could be depicted graphically and would provide better notification to pilots. The commenters noted perceived limitations in the NOTAM system used to inform pilots of temporary restricted areas established under part 73.

TFRs under 14 CFR 91.137 are not used for any pre-planned military operations involving hazardous activity. Additionally, a TFR issued under § 91.137 involves restrictions and limitations that are not appropriately applied to military operations. The fact that commenters perceive that a TFR permits better notification to a pilot about restricted airspace is not sufficient to warrant using § 91.137 for activity that it was not intended to cover.

One commenter suggested a CFA as an alternative. CFAs are not intended for aerial activities which involve aircraft ordinance delivery which this LSE will involve.

R-2509W creates a narrow funneling of traffic at a known “choke point” of airspace

One commenter stated the corridor created by restricted airspace in the high desert of Southern California is already very narrow and congested and funnels high amounts of traffic today. The commenter noted that adding restricted areas that will reduce the corridor will exacerbate the problem. The commenter suggested expanding the existing restricted area into one of the already established military operations areas (MOA) on the eastern side of R-2509 and

away from the already narrow funnel in the west. AOPA contends that the proposed restricted areas create an unnecessary and unacceptable risk to general aviation pilots. AOPA specifically noted that, because the proposed R-2509W overlies a valley, it will force general aviation pilots to fly closer to precipitous rising terrain and will provide a greater challenge to pilots needing to turn around safely. AOPA also commented that federal airway V-386 which is heavily utilized by general aviation pilots will be impacted by the proposed restricted area. AOPA contended that the restricted area would force many pilots to deviate further to the west and into more complex and congested airspace. AOPA also noted that the FAA previously withdrew a proposal for the same temporary restricted areas because efforts to mitigate the aeronautical impacts were unsuccessful.

After the 2016 NPRM was withdrawn, LA Center negotiated certain mitigations with the Marine Corps in response to LA Center's aeronautical study of the impact of the temporary restricted areas to non-participating aircraft operating within the corridor west of the proposed restricted areas. In response to the aeronautical study, the Marines met with LA Center and addressed internal boundary changes for R-2509N and R-2509E which allow for arrivals and departures to fly over the restricted areas allowing better flow control and altitude stratum for Metroplex procedures. Additionally, the Marine Corps agreed to limit the maximum altitude for R-2509E to FL400 for only three days of the exercise otherwise the maximum altitude will be FL220. The FAA has further addressed the commenters concerns by restricting the airspace the Marine Corps will utilize within R-2509W to 8,000 feet MSL for the duration of the exercise and limiting the airspace above R-2509N to 16,000 feet MSL for the duration of the exercise. These changes account for the differences from the 2016 NPRM that could not be agreed upon prior to the August 2016 exercise. Those operations were cancelled and the NPRM withdrawn due to

inability to alleviate aeronautical concerns. The mitigations agreed to by the Marine Corps have adequately addressed the FAA's earlier concerns.

In regard to the commenters' recommendation to expand to the east rather than into the corridor in the west, the Marine Corps conducted an extensive land use study which included a review of the possible expansion to the east side of the current restricted area. The planned exercise requires land and airspace that allows for close air support, which is the use of aviation in support of ground units, surface fires and maneuver areas that are oriented for continual progression throughout the exercise area. The study found that the land to the east was not a feasible alternative for the conduct of the planned exercise. Additionally, the use of surface fires is required to integrate with both fixed and rotary winged aircraft that would require the use of land the Department of Defense does not possess. Lastly, the Safety Risk Management Panel conducted by FAA identified the proposal added minimal impact to the National Airspace System (NAS) compared to daily operations.

Pilots need advanced notifications of activation and awareness of Temp RAs

AOPA stated concerns of the lack of awareness for pilots for Temp RAs as a whole. The infrequent use of Temp RAs in the past 20 years, lack of discussion within the aeronautical manuals for general aviation pilots, and lack of temporary special use airspace depicted electronically (most notably the electronic flight bag), all lead to the potential of a general aviation pilot to violate the Temp RAs. AOPA commented that the times of use in the NOTAM for the temporary restricted areas should be changed to provide 4 hours advance notice before the areas are activated.

The FAA agrees and directed the Marine Corps to work within the current system to insure pilots are notified of the LSE by:

1. Working with Los Angeles Center to establish “Pointer NOTAMs” to enhance coverage and visibility of the activities taking place.
2. Publish Special Use Airspace NOTAMs no less than six hours prior to hazardous activity taking place.
3. Work with the FAA to ensure the Temp RAs will be reflected on the FAA’s SUA website: <https://sua.faa.gov/sua/siteFrame.app>, for current flight planning information.
4. Coordinate with AOPA on public outreach matters.

Additionally, the FAA has started the process to update aeronautical manuals to define what temporary special use airspace entails and developing a process to electronically display temporary special use airspace on the electronic flight bag.

Differences from the NPRM

In response to comments and the FAA aeronautical study completed by Los Angeles Center, the FAA changed the internal boundaries of two of the restricted areas (R-2509N and R-2509W) that were proposed in the NPRM. Geographic lat./long. coordinates have been adjusted to accommodate traffic above and around the newly established temporary restricted areas ensure ample separation from non-participating traffic. The following restricted area updates are incorporated in this action.

Three geographic lat./long. coordinates internal to R-2509N and R-2509E have been changed and four new points were established.

The Rule

The FAA is amending 14 CFR part 73 to establish new temporary restricted areas (R-2509E, R-2509W, and R-2509N) at Twentynine Palms, CA. Subsequent to the NPRM, the FAA is also incorporating the restricted area updates noted in the Differences from the NPRM

section. The FAA is taking this action to accommodate live fire from pistols, rifles, machine guns, anti-tank weapons, mortars, artillery, Unmanned Aircraft Systems, fixed wing, and rotary wing training activities including close air support and live ordnance delivery. These temporary restricted areas are required to effectively deconflict Department of Defense and civilian air traffic from hazards associated with live fire training. The amendments are as follows:

Temporary R-2509E: The geographic coordinate lat. 34°40'30"N., long. 116°29'43"W., in the boundaries description proposed in the NPRM is replaced with lat. 34°39'24"N., long. 116°29'19"W.; Geographic coordinate lat. 34°34'17"N., long. 116°35'52"W.; in the boundaries description proposed in the NPRM is replaced with lat. 34°32'36"N., long. 116°35'12"W.

Temporary R-2509N: The geographic coordinate lat. 34°39'24"N., long. 116°29'19"W.; was added to the proposed legal description. The geographic coordinate lat. 34° 34' 17"N., long. 116° 35' 52"W.; in the proposed boundaries description, is replaced with lat. 34°32'36"N., long. 116°35'12"W.

Temporary R2509N/E/W: The "times of use" for each legal description has changed to read: Intermittent by NOTAM 6 hours in advance during the period from August 7 to August 26, 2017.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

In accordance with FAA Order 1050.1F, paragraphs 8-2 and 9-2, *Adoption of Other Agencies' National Environmental Policy Act Documents*, and *Written Re-evaluations*, and 7400.2L, paragraph 32-2-3, the FAA, after conducting an independent review and evaluation of the United States Navy's 2012 Final Environmental Impact Statement (EIS) and the U.S. Navy's 2017 Final Supplemental Environmental Impact Statement (2017 EIS) and Written Re-evaluation for Land Acquisition and Airspace Establishment to Support Large-Scale Marine Air Ground Task Force Live-Fire and Maneuver Training at Marine Corps Air Ground Combat Center, Twenty-nine Palms, California, has determined that the 2012 EIS and 2017 SEIS and their supporting documentation, as incorporated by reference, adequately assess and disclose the environmental impacts of the Proposed Action including evaluation of the establishment of airspace for six temporary restricted airspace areas R-2509, 2509E, 2509W, and 2509N (aka R-2509 E/W/N)

Based on the evaluation for potential environmental impact in the above-mentioned NEPA documents, the FAA, as the Cooperating Agency, concluded that adoption of the EIS for Land Acquisition and Airspace Establishment to Support Large-Scale Marine Air Ground Task Force Live-Fire and Maneuver Training at Marine Corps Air Ground Combat Center, Twenty-nine Palms, California, with incorporation of its supporting documentation, is authorized in accordance with 40 CFR1506.3, *Adoption*. Accordingly, FAA adopts the 2012 EIS and 2017 EIS

and takes full responsibility for the scope and content that address the FAA's airspace establishment action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 73 as follows:

PART 73 - SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 73.25 California (Amended)

2. §73.25 is amended as follows:

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R-2509E Twentynine Palms, CA [New]

Boundaries.	Beginning at lat. 34°39'24"N., long. 116°29'19"W.; to lat. 34°36'00"N., long. 116°28'03"W.; to lat. 34°31'30"N., long. 116°26'48"W.; to lat. 34°30'00"N., long. 116°26'23"W.; to lat. 34°21'35"N., long. 116°21'38"W.; to lat. 34°19'30"N., long. 116°20'29"W.; to lat. 34°17'38"N., long. 116°19'19"W.; to lat. 34°22'25"N., long. 116°31'10"W.; to lat. 34°32'36"N., long. 116°35'12"W.; to the point of beginning.
Designated altitudes.	Surface to FL 400.
Time of designation.	Intermittent by NOTAM 6 hours in advance from August 7 to August 26, 2017.
Controlling agency.	FAA, Los Angeles Air Route Traffic Control Center.
Using agency.	Commanding General, Marine Corps Air Ground Combat Center (MCAGCC), Twentynine Palms, CA.

R-2509W Twentynine Palms, CA [New]

Boundaries. Beginning at lat. 34° 35' 03"N., long. 116° 36' 10"W.;
to lat. 34° 22' 25"N., long. 116° 31' 10"W.;
to lat. 34° 27' 38"N., long. 116° 40' 34"W.;
to lat. 34° 27' 59"N., long. 116° 42' 51"W.;
to lat. 34° 29' 44"N., long. 116° 42' 51"W.;
to the point of beginning.
Excluding that airspace within a 3.4-mile radius of point in space
at lat. 34°25'32" N., long. 116°36'52" W.; surface to 1,500 feet
AGL.

Designated altitudes. Surface to 8,000 feet MSL.

Time of designation. Intermittent by NOTAM 6 hours in advance from August 7 to
August 26, 2017.

Controlling agency. FAA, Los Angeles Air Route Traffic Control Center.

Using agency. Commanding General, Marine Corps Air Ground Combat Center
(MCAGCC), Twentynine Palms, CA.

R-2509N Twentynine Palms, CA [New]

Boundaries. Beginning at lat. 34° 35' 03"N., long. 116° 36' 10"W.;
to lat. 34° 40' 30"N., long. 116° 29' 43"W.;
to lat. 34° 39' 24"N., long. 116° 29' 19"W.;
to lat. 34° 32' 36"N., long. 116° 35' 12"W.;
to the point of beginning.

Designated altitudes. Surface to 16,000 feet MSL.

Time of designation. Intermittent by NOTAM 6 hours in advance from August 7 to
August 26, 2017.

Controlling agency. FAA, Los Angeles Air Route Traffic Control Center.

Using agency. Commanding General, Marine Corps Air Ground Combat Center
(MCAGCC), Twentynine Palms, CA.

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